United States District Court
For the Northern District of California

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5   UNITED STATES DISTRICT COURT

6   NORTHERN DISTRICT OF CALIFORNIA

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8   BAYMARK FINANCIAL, INC.,   No. C-13-4264 EMC

9   Plaintiff,
                                                ORDER RE REFERRAL NOTICE
10   v.

11   KEVIN SMITH, *et al.*,

12   Defendants.
     _____/

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15   Defendant Rita Schoenborn has appealed this Court's disposition of the above-referenced

16   case. *See* Docket No. 12 (notice of appeal). The Ninth Circuit has made a referral to the

17   undersigned for the limited purpose of determining whether *in forma pauperis* status should

18   continue for the appeal or whether the appeal is frivolous or taken in bad faith.

19   The Court concludes that the appeal is frivolous, and therefore *in forma pauperis* status

20   should not continue for the appeal. To the extent Ms. Schoenborn challenges this Court's

21   conclusion that subject matter jurisdiction is lacking, 28 U.S.C. § 1447(d) prohibits appellate review.

22   *See* 28 U.S.C. § 1447(d) (providing that "[a]n order remanding a case to the State court from which

23   it was removed is not reviewable on appeal or otherwise"); *Harmston v. City & County of San*

24   *Francisco*, 627 F.3d 1273, 1277 (9th Cir. 2010) (explaining that a remand based on lack of subject

25   matter jurisdiction is not appealable in light of § 1447(d)). While § 1447(d) allows for an appeal

26   from a remand order where the removal was made pursuant to 28 U.S.C. § 1442 or 1443, Ms.

27   Schoenborn's filings did not articulate any plausible basis for invocation of those statutes.

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Accordingly, the Court revokes Ms. Schoenborn's *in forma pauperis* status. **The Clerk of the Court is instructed to *immediately* notify the Ninth Circuit of this determination.**

IT IS SO ORDERED.

Dated: October 31, 2013

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EDWARD M. CHEN
United States District Judge